F. C. MINKLER

IBLA 82-886 Decided March 23, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application U-46723.

Affirmed.

1. Mineral Leasing Act: Generally -- Mineral Leasing Act: Combined Hydrocarbon Leases -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Lands Subject to -- Tar Sands

   The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

2. Mineral Leasing Act: Generally -- Mineral Leasing Act: Combined Hydrocarbon Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Competitive Leases -- Tar Sands

   An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leasable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

APPEARANCES: Richard L. Williams, Esq., Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

F. C. Minkler appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated May 12, 1982, rejecting his simultaneous oil and gas lease application, U-46723, because the lands in the application are within the P. R. Spring Designated Tar Sand area.

Appellant received second priority for oil and gas lease U-46723 covering parcel UT 142 at the July 1980 simultaneous drawing. The application of the first drawee was rejected by decision of the Utah State Office, BLM, on November 20, 1980. The first drawee appealed the decision to the Board of Land Appeals which by decision dated June 3, 1981 (Vincent M. D'Amico, 55 IBLA 116 (1981)), affirmed the decision of the Utah State Office. The first drawee petitioned the Board for reconsideration of its decision. The petition for reconsideration was denied by order dated August 24, 1981. A further appeal by the first drawee to the United States District Court (which was subsequently dismissed) delayed return of the case file to BLM until April of 1982.

The decision rejecting appellant's application stated in part:

> Parcel UT 142 in the July 1980 Simultaneous Filings for Oil and Gas Leases listed the following lands as available for new offers:
>
> T. 13 S., R. 24 E., SLM, Utah
> Sec. 30, lots 3, 4, E 1/2 SW 1/4;
> Sec. 31, lots 1-4, E 1/2 W 1/2.
>
> Containing 476.14 acres, Uintah County, Utah
>
> F. C. Minkler, M.D., established second priority for parcel UT 142, assigned Serial No. U-46723.
>
> On November 5, 1980 the Minerals Management Service notified this office that the above-described lands are within the P.R. Spring Designated Tar Sand area, effective September 23, 1980.
>
> The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, Sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas.
> * * *
>
> Inasmuch as oil and gas lease application U-46723 did not issue prior to enactment of the Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, effective November 16, 1981, U-46723 is hereby rejected in its entirety.

In his statement of reasons appellant argues that there was no prohibition against issuing him a lease on parcel UT 142 when the final decision of

the Board was entered on August 24, 1981, rejecting the first drawee's petition for reconsideration, which decision represented the final agency review of the first drawee's appeal. Appellant asserts that BLM acted arbitrarily in not issuing the lease immediately upon the exhaustion of the appeal of the first drawee, 2 months prior to the effective date of the Combined Hydrocarbon Leasing Act of 1981 (CHLA).

[1, 2] The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. 30 U.S.C. § 226(a) (1976); Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease application was pending at a time when the land was available for leasing does not invest him with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the application, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The application to lease is a hope, or expectation, rather than a valid claim against the Government. McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra at 666; D. R. Gaither, 32 IBLA 106, 109 (1977), aff'd sub nom. Rowell v. Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), aff'd in part and rev'd in part on other grounds, 631 F.2d 699 (10th Cir. 1980).

Beyond the question of Secretarial discretion, ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Department of the Interior is to administer them in accordance with the dictates of the legislative branch. Since appellant's lease application was still pending on the date CHLA took effect, and was nonconforming thereunder, the Secretary is without authority to issue a noncompetitive lease for the land and the application must be rejected. No oil and gas lease may issue to appellant pursuant to this application because the lands requested are within a special tar sand area and are subject to leasing only through competitive bidding. Justheim Petroleum Co., supra; Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93, 89 I.D. 82 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge